

Renewables Committee Decision on Request by Oasis Power Partners, LLC to Modify Funding Awards for the Windland, Inc. and Windridge, LLC Projects

Windland, Inc. is a 19.8 megawatt wind project located in the Tehachapi wind resource area. The project was a winning bidder in the June 1998 auction (Notice of Auction 500-97-506), and was conditionally awarded \$4,384,000 (funding award agreement REN-98-016 approved by the Energy Commission in February 1999). This award was based on Windland's incentive bid of 1.37 cents/kWh.

Windridge LLC is a 30 megawatt wind project also located in the Tehachapi wind resource area. The project was conditionally awarded \$4,273,500 in the October 2000 auction (Notice of Auction 500-00-504) based on an incentive bid of 0.74 cents/kWh.

At the time of the auctions, the two projects were owned by separate entities. Windland was owned by Windland, Inc., and Windridge was owned by FPL Energy, LLC. The projects were subsequently acquired by Oasis Power Partners, LLC, and are being developed as a single project. For purposes of the New Renewable Resources Account funding awards, however, the two segments of the project are still considered separate projects.

When Windland and Windridge received their funding awards, the *Guidebook for the Renewable Energy Program – Volume 2A, New Renewable Resources Account* required projects to be on-line by December 31, 2001 to be able to receive five years of incentive payments. The law was subsequently amended to allow projects to come on-line as late as December 31, 2006 and still receive five years of payments, but the project developer had to demonstrate to the Energy Commission's satisfaction that the delay was a result of "circumstances beyond the developer's control."

At the time of the June 1998 auction, Windland submitted a project schedule to the Energy Commission showing that the project would be on-line by December 1, 1999. At the time of the October 2000 auction, Windridge submitted a project schedule to the Energy Commission showing that the project would be on-line by October 1, 2001.

However, because the projects were located in the Tehachapi wind resource area, there was difficulty in obtaining access to a transmission line and the projects were therefore delayed. Windland and Windridge then petitioned the Energy Commission in July 2002 for extension of their funding awards, stating an anticipated on-line date of January 1, 2005.

The Renewables Committee initially determined that the project delays were not the result of circumstances beyond the developers' control, because transmission constraints in the Tehachapi were well-known at the time the projects began development. The Committee therefore denied Windland's and Windridge's petitions.

Shortly after the denial was issued, Windland and Windridge were able to obtain transmission access, and in December 2002 petitioned the Committee for reconsideration. After receiving documentation showing that the projects had resolved their transmission difficulties and planned to come on-line by December 31, 2003, the Committee reconsidered its previous decision and granted the extension for both projects.

The Windland project, as a winner in the first auction, was extended to December 31, 2003 and able to receive payments until December 30, 2008. The Windridge project, as a winner in the second auction, was also extended to December 31, 2003, but was only able to receive payments until July 2, 2008, the date specified in the Notice of Auction (NOA) 500-00-504 and the program guidelines.

The decision also stated that if the projects failed to come on-line by December 31, 2003 or a reasonable time thereafter, the Energy Commission will re-evaluate the status of the projects to determine if additional award reductions or cancellations were justified.

In October 2003, Windland and Windridge submitted a request for change of ownership for the project to Oasis Power Partners, LLC. When the federal wind production tax credit expired on December 31, 2003, development of the project slowed. In May 2004, Oasis sent a request to the Renewables Committee to extend the on-line date for the project to December 31, 2004, subject to enactment of the wind production tax credit. Oasis requested an added 120-day grace period contingent on demonstration that it is diligently pursuing construction at that time. Oasis requested that the five year payment period for the award also be extended commensurately, and that the Windridge segment of the project not be subject to the 50 percent award reduction for projects coming on-line after July 1, 2001, as specified in NOA 500-00-504.

Committee Decision

The Renewables Committee consists of Commissioner John Geesman, Presiding, and Commissioner Jackalyne Pfannenstiel, Associate. Commissioner Pfannenstiel has recused herself from decision-making on these projects.

Windland Inc., Project

Based on information submitted by Oasis, the Committee recommends that the project's funding award and required on-line date be extended to December 31, 2004, and that the project not receive any incentive payments for generation after December 30, 2009. Both dates are subject to a 120-day "grace period," subject to a demonstration by Oasis Power Partners, LLC that it is diligently pursuing construction of the project. However, the Committee does not grant Oasis's request for a day-by-day extension of the on-line date if the production tax credits are enacted after July 1, 2004.

The Committee believes that the recent acquisition of the Windland Project by Oasis argues for flexibility in the project's on-line date, and that Oasis should not be penalized for previous project delays. In addition, Oasis has made significant progress towards project development, including obtaining transmission access, an interconnection agreement, and a power purchase agreement, which further argues for extension of the project's funding award.

Although NOA 500-00-504 and the Committee's previous decision contain provisions for award reductions, the Committee does not believe an award reduction is justified at this time if the Windland project is on-line by December 31, 2004. However, if the project is not on-line by December 31, 2004, or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an additional award reduction or cancellation is justified.

Windridge, LLC Project

Based on information submitted by Oasis, the Committee recommends that the required on-line date for the Windridge project be extended to December 31, 2004. However, the Committee also recommends that the project may not receive any incentive payments for generation after July 2, 2008, consistent with the requirements of NOA 500-00-504 and the program guidelines. In addition, the Committee recommends denying Oasis Power Partners, LLC's request to reinstate the full funding award for the Windridge project, and does not grant Oasis's request for a day-by-day extension of the on-line date if the production tax credits are enacted after July 1, 2004.

The Guidebook for the Renewable Energy Program – Volume 2A, New Renewable Resources Account, clearly states that projects holding awards under NOA 500-00-504 will not receive any incentive payments for generation after July 2, 2008.

Further, NOA 500-00-504 imposed the award penalties shown below based on projects' on-line dates:

PENALTIES FOR WINNING PROJECTS IN NOA 500-00-504	
Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
September 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2004	50 Percent
July 2, 2004 and beyond	Award may be further reduced or terminated.

NOA 500-00-504 was held during California's electricity crisis, and projects holding awards from the auction were expected to be on-line by July 1, 2001 to help with anticipated summer peak electricity demands. Projects coming on-line after July 1, 2001 were considered to have less value than those coming on-line on or before that date, as reflected by the larger penalties for later on-line dates.

Several projects from NOA 500-00-504 have already come on-line and are receiving reduced funding awards under the schedule of penalties shown above. For fairness and consistency, the Committee believes it cannot approve the reinstatement of the funding award for the Windridge project to its full amount, since doing so would in effect retroactively change the rules of NOA 500-00-504.

Although the *Guidebook* and NOA 500-00-504 contain provisions for additional award reductions, the Committee does not believe any additional reduction is justified at this time as long as the Windridge Project is on-line by December 31, 2004. However, if the project is not on-line by December 31, 2004, or by a reasonable period of time thereafter, the Committee recommends that the Energy Commission re-evaluate the status of the project to determine if an additional award reduction or cancellation is justified.

While the Committee's proposed decision does mean that the Windridge project will not be able to receive five full years of payments for its generation, program guidelines do allow projects to increase the size of their projects under certain circumstances, which could conceivably allow the Windridge project to recover the full funding award (representing 50 percent of its original bid) in less than five years.

The Guidebook for the Renewable Energy Program – Volume 2A, New Renewable Resources Account states on page 11 states:

“ . . . a winning bidder may avoid a reduction in project incentives and total award by proposing project modifications to increase the project's generating capacity. The winning bidder must notify the Energy Commission in writing in advance of making any such modifications and must also demonstrate to the Energy Commission's satisfaction that the shortfall in project generation was unanticipated and caused by circumstances beyond the bidder's reasonable control, and that the modified project remains otherwise eligible for funding.”